IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5299 of 2019(O&M)

Date of decision: 28.8.2019

National Insurance Co. ltd. …..Appellant

VERSUS

Kulwant Singh and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. V. Ramswaroop, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 09.05.2019 passed by the Motor Accidents Claims Tribunal, Mohali (in short 'the Tribunal') whereby compensation has been awarded on account of injuries sustained by Kulwant Singh in a motor vehicular accident that took place on 14.04.2016.

Counsel for the appellant argued that in respect of the occurrence in question, firstly DDR was lodged wherein it has been specifically mentioned that accident took place because a cow suddenly appeared before car of the claimant bearing No.PB-65-5058 and no one was at fault and later after about 20 days, he registered FIR wherein it has been stated that accident took place due to rash and negligent driving of alleged offending vehicle No.CH03-F-1916 driven by Raj Kumar (respondent No.2 herein). It is vehemently argued that in view of the first version recorded in the DDR, findings recorded by the Tribunal on issue

No.1 attributing rashness and negligence to driver of offending vehicle cannot be allowed to sustain and are liable to be set aside.

I have heard counsel for the appellant, perused the paper-book particularly the award.

Counsel for the appellant, in response to a query, is not in a position to point out any tangible material elicited in cross examination of injured Kulwant Singh to impeach his credibility or to prove that accident is not the result of rash and negligent driving of offending vehicle bearing No.CH03-F-1916 by Raj Kumar. The controversy raised in the present appeal is squarely covered against the insurance company in view of the judgment of this Court **Bansi and another Vs. Vikas, FAO No.7213 of 2010 decided on 29.08.2012** wherein this Court has held, reads thus:-

> "When the claimant had originally stated that there had been no negligence on the part of the motorcyclist and that the accident was inevitable on account of a cow crossing the road and later he resiled from such a statement, I have no reason to suspect that he was speaking any untruth before the Court. A person who so drives his motorcycle that would result in dashing against a tree when a cow was crossing, cannot be an act of careful driving. By the very nature of things, a motorcyclist dashing against a tree when a cow was crossing the road, ought to be stated to be guilty of negligent driving. If the claimant was making a statement initially that there was no negligence on the part of the motorcyclist but later he made a different statement to sustain his claim, it was

perfectly justified that he made a re-assessment of his own judgment of what caused the accident”

So far as plea of the insurance company that in the criminal proceedings, respondent No.1 – Raj Kumar has been acquitted of the charges, acquittal in a criminal case *ipso facto* is not a ground to reject the claim for compensation as judgment of the criminal Court is not binding upon the Civil Court when otherwise standard of proof in a criminal case is much higher than that in claim proceedings, summary in nature and are not amenable to strict principles of law of evidence or/and Code of Civil Procedure, 1908. In this view of the mater, I find myself unable to be persuaded by the arguments of counsel for the insurance company that findings of the Tribunal on issue No.1 are faulty and merits intervention.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

AUGUST 28, 2019 **(REKHA MITTAL)**
‘D. Gulati’ **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no